

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JEROME W. OSBERGER,**

**Petitioner,**

**v.**

**Civil Action No. 2:10cv97**

**JOEL ZIEGLER, Warden,**

**Respondent.**

**ORDER**

On September 15, 2010, Magistrate Judge John S. Kaull filed his Report and Recommendation ("R&R")(Doc. 16), wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. Petitioner filed his objections on September 23, 2010 (Doc. 19).

Upon examination of the report from the Magistrate Judge, it appears to this Court that the issues raised by the petitioner in his Motion to Stay Disciplinary Action (Doc. 11), wherein petitioner seeks a Court Order preventing the respondent from engaging in further disciplinary actions against him until after resolution of the above-styled civil action, were thoroughly considered by Magistrate Judge Kaull in his R&R. The Magistrate Judge has recommended that the motion be construed as a Motion for Injunctive Relief and that it be denied. Upon review of the petitioner's objections, this Court finds that the petitioner has not raised any issues that were not already throughly considered and addressed by the Magistrate Judge in his R&R.

More particularly, as set forth in the Magistrate Judge's R&R, a court cannot grant injunctive relief unless the petitioner establishes "(1) that he is likely to succeed on the

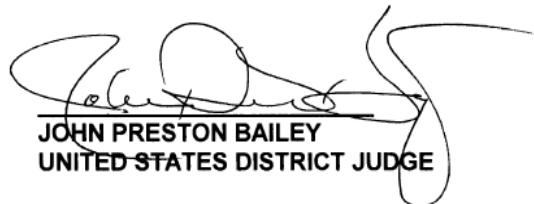
merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.” *Real Truth About Obama, Inc. v. Federal Election Comm’n*, 575 F.3d 342, 346 (4th Cir. 2009). The Fourth Circuit further held that injunctive relief may only be awarded upon “a clear showing that the plaintiff is entitled to such relief.” *Id.* This Court has carefully reviewed the record before it and finds, in agreement with the Magistrate Judge, that the petitioner cannot clearly show that he is likely to succeed on the merits and will suffer irreparable harm in the absence of injunctive relief. Petitioner’s objections are overruled. Moreover, this Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that the R&R accurately reflects the law applicable to this case. Therefore, it is

**ORDERED** that Magistrate Judge Kaull’s R&R (Doc. 16) be, and the same hereby is, **ADOPTED**. Accordingly, it is

**ORDERED** that the petitioner’s Motion to Stay Disciplinary Action (Doc. 11), herein construed as a Motion for Injunctive Relief, shall be, and the same hereby is, **DENIED**.

The Clerk of Court is directed to transmit a copy of this Order to all parties appearing herein.

**DATED:** April 1, 2011.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE